



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO IL 60604-3590

MAIL ROOM ATTENTION

SEP 04 2009

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Ambrose
President
Rentech Energy Midwest Corporation
16675 Highway 20 West
East Dubuque, Illinois 61025-0229

Dear Mr. Ambrose:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves Rentech Energy Midwest Corporation AA Docket No. CAA-05-2009-0032. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 09 2009.

Pursuant to paragraph 28 of the CAFO, Rentech Energy Midwest Corporation must pay the \$79,700.50 civil penalty within 30 days of the date the CAFO was filed, OCT 09 2009. The check must display the case docket number, CAA-05-2009-0032, and the billing document number, _____.

Please direct any questions regarding this case to Cynthia King, Associate Regional Counsel, (312) 886-6831.

Sincerely,

Brent Marable
Chief

Air Enforcement and Compliance Assurance (IL/IN)

Enclosure

cc: Ray Pilapil, Manager
Bureau of Air
Compliance and Enforcement Section
Illinois Environmental Protection Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2009-0032
)	
Rentech Energy Midwest Corporation)	Proceeding to Assess a Civil Penalty
East Dubuque, Illinois,)	Under Section 113(d) of the Clean Air
)	Act, 42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U. S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Rentech Energy Midwest Corporation (Rentech or Respondent), a corporation doing business in Illinois.
4. Pursuant to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Rentech consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Rentech admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Rentech waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 608 of the Act, 42 U.S.C. § 7471g, requires the Administrator of EPA to promulgate regulations establishing standards and requirements regarding the use and disposal of “Class I” and “Class II” ozone-depleting substances.

10. On May 14, 1993, in accordance with Section 608 of the Act, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F, applicable to Recycling and Emissions Reduction (the Subpart F regulations).

11. 40 C.F.R. § 82.150(b) provides that the Subpart F regulations apply to any “person” servicing, maintaining, or repairing “appliances,” as those terms are defined at 40 C.F.R. § 82.152.

12. The Subpart F regulations, at 40 C.F.R. § 82.156(i)(2), require that an owner or operator of industrial process refrigeration equipment normally containing more than 50 pounds of refrigerant must have leaks repaired if the appliance is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period. Repairs must bring annual leak rates to below 35 percent during a twelve month period within 30 days after discovery of the leak.

13. The Subpart F regulations, at 40 C.F.R. § 82.156(i)(3), require that an owner or operator of industrial process refrigeration equipment conduct a follow-up verification test within 30 days after the initial verification test.

14. The Subpart F regulations, at 40 C.F.R. § 82.156(i)(3)(ii), require that an owner or operator of industrial process refrigeration equipment must retrofit or retire such equipment within one year of failing the follow-up verification test.

15. The Subpart F regulations, at 40 C.F.R. § 82.156(i)(3)(iii), require that an owner or operator of industrial process refrigeration equipment that fails a follow-up verification test must notify EPA within 30 days of the failed follow-up verification test.

16. The Subpart F regulations, at 40 C.F.R. § 82.156(i)(6), state that an owner or operator of industrial process refrigeration equipment are not required to repair a leak if they develop a one-year retrofit and retirement plan within 30 days of discovering the exceedance of the applicable leak rate or within 30 days of a failed follow-up verification test. The plan must be dated and kept at the site of the appliance.

17. Pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), the Administrator of EPA may issue an administrative penalty order (APO) assessing civil penalties of up to \$25,000 per day for each violation of the Act. Under the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19, that amount was increased to \$32,500 per day of violation, up to a total of \$270,000, for violations that occurred between March 15, 2004 and January 11, 2009, and up to \$37,500 per day of violation, up to a total of \$295,000, for violations that have occurred on or after January 12, 2009. See 73 Fed. Reg. 75340-75346 (Dec.11. 2008).

18. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

19. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

20. Rentech owns and operates an ammonia fertilizer production facility in East Dubuque, Illinois (the Facility). The Facility contains an industrial process refrigeration unit (Unit B) with normal charge of over 50 pounds.

21. Rentech discovered the alleged violations referenced in this section of the CAFO through an internal audit beginning in August 2008. On September 15, 2008, Rentech voluntarily self-disclosed to EPA potential violations of the Subpart F regulations relating to industrial process refrigeration units at the Facility.

22. The industrial process refrigeration unit referenced above is an "appliance," as defined in 40 C.F.R. § 82.152, and uses the class II refrigerant HP-80.

23. On January 20, 2006 and June 26, 2006, Unit B experienced leaks that resulted in an annual leak rate exceeding 35 percent in violation of 40 C.F.R. § 82.156(i)(2), and Section 608 of the Act, 42 U.S.C. § 7471g.

24. Following the January 20, 2006 and June 26, 2006 leaks and repair attempts, Rentech failed to perform a follow-up verification test to verify that the repairs performed on

Unit B brought the leak rate to below 35 percent in violation of 40 C.F.R. § 82.156(i)(3), and Section 608 of the Act, 42 U.S.C. § 7471g.

25. Rentech failed to retrofit or retire Unit B within one year following an exceedance of the applicable leak rate or a failed follow-up verification test in violation of 40 C.F.R. § 82.156(i)(3)(ii), and Section 608 of the Act, 42 U.S.C. § 7471g.

26. Rentech failed to notify EPA of Unit B's failed follow-up verification test in violation of 40 C.F.R. § 82.156(i)(3)(iii), and Section 608 of the Act, 42 U.S.C. § 7471g.

27. Rentech failed to develop a retrofit or retirement plan when repairs performed on Unit B were unable to bring the leak rate below 35 percent in violation of 40 C.F.R. § 82.156(i)(6), and Section 608 of the Act, 42 U.S.C. § 7471g.

Civil Penalty

28. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case and Rentech's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$79,700.50.

29. Within 30 days after the effective date of this CAFO, Rentech must pay a \$79,700.50 civil penalty by one of the following methods:

- a. sending a cashier's or certified check payable to the "Treasurer, United States of America," and noting the case name, docket number of this CAFO and the billing document number; or
- b. an electronic funds transfer, the funds payable to the "Treasurer, United States of America," and noting in the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO and the billing document number.

30. For checks sent by regular U.S. Postal Service mail, the check should be sent to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

31. For checks sent by express mail, the check should be sent to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

32. For electronic funds transfer, the funds should be wired to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

33. If paying by check, Rentech must include a transmittal letter that accompanies the payment and which states the case name, the case docket number, and the billing document number. Rentech must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Cynthia A. King, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

34. This civil penalty is not deductible for federal tax purposes.

35. If Rentech does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

36. Pursuant to 31 C.F.R. § 901.9, Rentech must pay interest on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Rentech must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Rentech must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

37. This CAFO resolves only Rentech's liability for federal civil penalties for the facts and violations alleged in this CAFO.

38. The CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

39. This CAFO does not affect Rentech's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in Paragraph 37, above.

compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

40. Rentech certifies that it is complying fully with 40 C.F.R. Part 82, Subpart F.

41. This CAFO constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Rentech's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

42. The terms of this CAFO bind Rentech, its successors, and assigns.

43. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

44. Each party agrees to bear its own costs and attorneys' fees in this action.

45. This CAFO constitutes the entire agreement between the parties.

46. The effective date of this CAFO is the date on which the Final Order it is signed by the Regional Administrator or his designee.

Rentech Energy Midwest Corporation, Respondent

Date

John A. Ambrose
President
Rentech Energy Midwest Corporation

United States Environmental Protection Agency, Complainant

9/13/09

Date

Cheryl L. Newton, Director
Air and Radiation Division
U.S. EPA, Region 5

CONSENT AGREEMENT AND FINAL ORDER


In the Matter of: Kentucky Energy Midwest Corporation, East Dubuque, Illinois

Docket No. CAA-05-2009-0032

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-4-09
Date


Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5

In the Matter of Rentech Energy Midwest Corporation
Docket No: CAA-05-2009-0032

CERTIFICATE OF MAILING

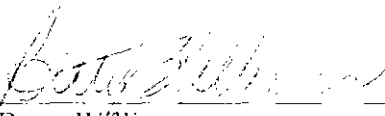
I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2009-0032 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Radiac Abrasives, Inc. and to Radiac Abrasives, Inc., Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Mr. John Ambrose
President
Rentech Energy Midwest Corporation
16675 Highway 20 West
East Dubuque, Illinois 61025-0229

I also certify that a copy of the CAFO was sent by first-class mail to:

Ray Pilapil, Manager
Bureau of Air
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

on the 9th day of September, 2009.


Betty Williams
Administrative Program Assistant
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 701 5320 0025 80 60 30